

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 89-64-E - ORDER NO. 89-680
JULY 5, 1989

IN RE: Berkeley Electric Cooperative,)	
Inc.,)	
)	
Complainant,)	
)	ORDER DENYING
vs.)	MOTION TO QUASH
)	
South Carolina Electric &)	
Gas Company, Inc.,)	
)	
Defendant)	
)	

On June 23, 1989, South Carolina Electric & Gas Company (SCE&G) filed a Motion to Quash Notice of Depositions and Subpoenas Duces Tecum in the above captioned matter. Nick W. Stegall also filed a request to join in SCE&G's Motion.

Berkeley Electric Cooperative, Inc. (Berkeley) and the Electric Cooperatives of South Carolina (the Cooperatives) noticed nine depositions and requested that the Commission issue subpoenas duces tecum to these deponents to require them to bring certain documents to their depositions. On June 5, 1989, the hearing on the merits in this matter began. Berkeley and the Cooperatives put on their case. SCE&G presented some of its case but could not complete its case by the end of the last day available for the proceeding at that time, Wednesday, June 7, 1989. The Commission therefore adjourned the hearing until July 5, 1989. Now during the

adjournment of the hearing, Berkeley has noticed the deposition of nine SCE&G employees or former employees. Berkeley has also asked the Commission to issue a subpoena duces tecum to all of these deponents to compel them to bring certain documents to their depositions. SCE&G's position is that since these notices of deposition were not filed with the Commission at least ten days prior to the commencement of the scheduled hearing pursuant to Commission Regulation 103-852, that Berkeley cannot take the proposed depositions and therefore cannot obtain subpoenas duces tecum. SCE&G states that Berkeley seeks to broaden the scope of the issues and evidence in the proceeding and that permitting Berkeley to change the playing field at this late hour would be prejudicial to SCE&G. According to SCE&G, the discovery requested by Berkeley is unreasonably cumulative, burdensome, and expensive taking into account the needs of this case. The parties have already conducted extremely extensive discovery.

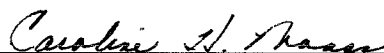
On June 27, 1989, Berkeley and the Cooperatives filed a Response in Opposition to Defendant's Motion. Berkeley states that the Defendant has attempted to delay this proceeding by requesting numerous continuances and objecting on numerous occasions to Berkeley's discovery requests. This latest Motion by Defendant is, according to Berkeley, another example of the Defendant's dilatory practices. Berkeley asserts that the Defendant did not produce the material which is the subject of the proposed depositions until two days before the hearing. It was revealed during the hearing that other individuals at SCE&G may have knowledge regarding certain

developer incentive strategies. Berkeley and the Cooperatives maintain that they are entitled to examine those individuals under oath to obtain all relevant material essential to the issues in this case. Berkeley states that under the South Carolina Circuit Court Rules of Civil Procedure a party desiring to take depositions must give ten (10) days notice to the parties which it did in this case. The proposed witnesses have had adequate time to prepare, therefore, according to Berkeley there is no prejudice to SCE&G.

The Commission finds that the Respondent's Motion to Quash should be denied. Berkeley should be allowed to continue its discovery as to the developer incentive strategies.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)